Mega Air-Conditioning Sdn Bhd v Capital Dynasty Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S2–21–41 OF 2000
KAMALANATHAN RATNAM J
29 AUGUST 2000

Land Law *— Restraints on dealings — Caveats — Cancellation of — Defendant deliberately withheld existence of settlement agreement to transfer property — Entry of caveat was mala fides —þWhehter caveat ought to be cancelled*

The plaintiff claimed beneficial ownership of a property that was sold by the original owner, Forad Holdings Sdn Bhd, to the second owner, LMT Engineering Sdn Bhd. The second owner had borrowed a sum of money from the first defendant but being unable to settle the loan, transferred the property to the first defendant. By a settlement agreement, the first defendant agreed to transfer the property to the plaintiff in order to contra the debt owed by the first defendant to the plaintiff. The first defendant executed Form 14A to effect the transfer and in order to protect its interest until the transfer, the plaintiff entered a caveat. The plaintiff was however unable to register the property as owner because the first defendant had entered a caveat in respect of the property.

Held, allowing the plaintiff's application to cancel the caveat:
The first defendant had deliberately withheld disclosure of the existence of the settlement agreement by which he had agreed to transfer the property to the plaintiff to contra the debt owed to the plaintiff. The act of entering a caveat after the agreement was an attempt by the first defendant to frustrate the plaintiff from registering itself as the owner of the property. The first defendant's entry of the caveat was totally mala fides (see p 15D–E).

[**Bahasa Malaysia summary**

Plaintif menuntut hakmilik benefisial atas hartanah yang telah dijual oleh pemilik asal, Forad Holdings Sdn Bhd, kepada pemilik kedua, LMT Engineering Sdn Bhd. Pemilik kedua telah meminjam wang daripada defendan pertama tetapi, oleh kerana tidak mampu membereskan pinjaman, telah memindah milik hartanah tersebut kepada defendan pertama. Melalui satu perjanjian penyelesaian, defendan pertama bersetuju memindah milik hartanah tersebut kepada plaintif bagi menyelesaikan hutang defendan pertama kepada plaintif. Defendan pertama menyempurnakan Borang 14A untuk melaksanakan pindah milik dan untuk melindungi kepentingannya sehingga pindah milik itu, plaintif telah memasukkan kaveat. Walau bagaimanapun, plaintif tidak dapat mendaftar hartanah tersebut

sebagai pemilik kerana defendan pertama telah memasukkkan kaveat ke atas hartanah tersebut.

Diputuskan, membenarkan permohonan plaintif untuk membatalkan kaveat tersebut:
Defendan pertama secara sengaja enggan mendedahkan kewujudan perjanjian penyelesaian di mana beliau telah berjanji akan memindah milik hartanah tersebut kepada plaintif untuk membereskan hutang yang dihutang kepada plaintif. Tindakan memasukkan kaveat selepas perjanjian tersebut merupakan cubaan defendan pertama menghalang plaintif daripada mendaftarkan dirinya sebagai pemilik hartanah tersebut. Kemasukan kaveat defendan pertama benar-benar mala fide (lihat ms 15D–E).]

Notes

For cases on caveats generally, see 8 *Mallal's Digest (4th Ed, 1999 Reissue) paras 2580–2810.*

Ranjit Kaur (Izharudin Ranjit & Co) for the plaintiff.
JH Low (*Ching Tan & Associates*) for the first defendant.

Kamalanathan Ratnam J:

Facts

The plaintiff claimed beneficial ownership of property known as Geran No 21489, Lot No 46224, Mukim Kuala Lumpur Wilayah Persekutuan. The original owner of the said property was Forad Holdings Sdn Bhd (the original owner). The original owner then entered into a sale and purchase agreement on 8 July 1998 and sold the said property to LMT Engineering Sdn Bhd (the second owner). The second owner had borrowed a sum of RM2.8m from the first defendant herein. Being unable to settle the said debt, the second owner entered into a settlement agreement on 6 August 1998 with the first defendant whereby the second owner agreed to transfer the said property to the first defendant. By another settlement agreement dated 11 August 1998 the first defendant agreed to transfer the said property to the plaintiff to contra the debt owed by the first defendant to the plaintiff. The first defendant had even executed Form 14A to effect the transfer of the said property. To protect its interest until the transfer, the plaintiff entered a caveat on 9 February 1999 in respect of the said property.

The plaintiff was unable to register the said property as owner because on 29 December 1999 the first defendant entered a caveat in respect of the said property. In support of the caveat the first defendant affirmed a statutory declaration and annexed a copy of the agreement dated 6 August 1998 which no doubt showed its interest in the said property. The first defendant had failed to disclose the settlement agreement dated 11 August 1998 by which the first defendant had agreed to transfer the said property to the plaintiff.

The application

This is the plaintiff's application for an order:

(1) to cancel the first defendant's caveat entered on 29 December 1999;

(2) that the second defendant do cancel the caveat entered on the document of title of the said property and to record the date of the cancellation and the reason therefore;

(3) that the first defendant be ordered to forward all relevant documents to the plaintiff to enable the plaintiff to register itself as the owner of the said property;

(4) damages to be assessed; and

(5) costs.

Findings of the court

From the facts stated so far it is obvious that the first defendant had been far from candid. The first defendant deliberately withheld from disclosure to the Registrar of Titles the existence of the settlement agreement dated 11 August 1998 whereby the first defendant had agreed to transfer the said property to the plaintiff to contra the debt owed by the first defendant to the plaintiff. It is relevant to note that the first defendant's caveat was entered after it had committed itself to the agreement of 11 August 1998. To my mind, this is a clear attempt to frustrate the plaintiff from registering itself as the owner of the said property. In spite of a notice to withdraw the caveat, the first defendant had failed and had refused to do so.

Mr Low for the first defendant submitted that the first defendant had terminated the settlement agreement dated 11 August 1998 and that the caveat was intended to protect the first defendant's interest pursuant to the earlier settlement agreement dated 6 August 1998 by virtue of which agreement, the first defendant had become the beneficial owner of the said property. Ms. Ranjit Kaur for the plaintiff vehemently denied that the settlement agreement dated 11 August 1998 had been cancelled. Mr Low then referred me to his client's affidavit (encl 8) and to exh ZA-8 which was a letter dated 10 April 2000 from the first defendant annulling the said settlement agreement dated 11 August 1998.

The caveat was lodged by the first defendant on 29 December 1999. The letter (exh ZA-8) terminating the agreement is dated 10 April 2000 and the reason given in the statutory declaration was the existence of the earlier settlement agreement dated 6 August 1998. Since the caveat was lodged based on a reason that was non-existent at the time of the lodgement of the caveat, clearly the caveat cannot stand.

It is plain as pikestaff that the first defendant merely lodged the caveat to frustrate the plaintiff from transferring the property to itself. It is interesting to note that whilst the plaintiff had already entered into a sale and purchase agreement with a third party for the sale of the said property on 23 February 2000, the said purchaser by his letter dated 5 April 2000 refused to proceed with the sale due to the first defendant's caveat. It is

unfortunate that the plaintiff had not filed an affidavit of service of the originating summons ('OS'), as it would show when the OS was served on the first defendant. Appearance has however been entered on 13 April 2000. I make this comment because the first defendant's notice of termination of the settlement agreement is dated 10 April 2000.

In any case I am of the view that the first defendant's entry of the caveat was totally mala fide. I therefore granted an order in terms of the plaintiff's prayers. From the outset the second defendant agreed to be bound by the decision of this court.

Order allowed.

Reported by Anitha MI Raman